
A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to establish an
2 inter-island renewable energy facility siting process for state
3 and county permits necessary for the siting, development,
4 construction, and operation of a renewable energy facility. The
5 facility would produce electricity for transmission from one
6 island to another.

7 SECTION 2. The Hawaii Revised Statutes is amended by
8 adding a new chapter to be appropriately designated and to read
9 as follows:

10 **"CHAPTER**

11 **INTER-ISLAND RENEWABLE ENERGY FACILITY SITING PROCESS**

12 § -1 **Definitions.** For the purpose of this chapter:

13 "County agency" means a department, division, office,
14 officer, agency, or other organization of a county government,
15 including a county council.

16 "County law" means a county charter provision, ordinance,
17 or administrative rule.



1 "County permit" means a permit that is subject to approval
2 by a county agency pursuant to federal, state, or county law.

3 "Energy resources coordinator" or "coordinator" means the
4 energy resources coordinator designated under section 196-3.

5 "Inter-island renewable energy facility" or "facility"
6 means a facility located on an island of the State that produces
7 electricity from renewable energy for transmission through
8 undersea cable to another island of the State. The term
9 includes any of the following associated with the facility:

10 (1) The land parcel on which the facility is situated;

11 (2) Any renewable energy production structure or
12 equipment;

13 (3) The undersea cable and its land route and origination
14 and destination sites;

15 (4) Any electricity transmission line connecting the
16 destination site by an undersea cable to a public
17 utility's electricity distribution system;

18 (5) Any on-site infrastructure; and

19 (6) Any on-site building, structure, other improvement, or
20 equipment necessary for the production of electricity
21 from the renewable energy site, transmission of the



electricity through an undersea cable, or any
accommodation for employees of the facility.

"Permit":

(1) Means any approval, no matter the nomenclature,
necessary for the siting, development, construction,
or operation of an inter-island renewable energy
facility; except that the term shall not include the
following:

(A) Acceptance by an accepting authority of an
environmental impact statement on a facility;

(B) Issuance by a county agency of a building or
grading permit; or

(C) Approval by the public utilities commission of a
power purchase agreement between an inter-island
renewable energy facility owner and a public
utility.

(2) Includes:

(A) A state land use reclassification;

(B) A county development, community, or community
development plan amendment;

(C) A county zoning map amendment;

(D) A state conservation district use permit;



(E) A state special permit for an agricultural or rural district;

(F) A special management area permit;

(G) A shoreline setback variance; and

(H) A grant of an easement on state or county real property.

"Power purchase agreement" means an agreement between an inter-island renewable energy facility owner and a public utility on the rate payable by the public utility for renewable energy generated electricity produced by the facility.

"Renewable energy" has the same meaning as that term is defined under section 269-91.

"State agency" means a department, division, office, officer, agency, or other organization of the state government, but not the legislature.

"State law" means a state constitutional provision, statute, or administrative rule.

"State permit" means a permit that is subject to the approval of a state agency pursuant to federal or state law.

§ -2 Staff and contractor; energy resources coordinator for inter-island renewable energy facility siting process. (a)

The energy resources coordinator may employ and dismiss staff



1 without regard to chapters 76 and 89 to assist the coordinator
2 in the implementation of this chapter. The salary of each staff
3 member shall be set by the coordinator. Each staff member shall
4 be entitled to participate in any public employee benefit
5 program plan or privilege.

6 The coordinator may also contract persons to assist the
7 coordinator in the implementation of this chapter.

8 § -3 **General duties of the coordinator.** The coordinator
9 shall:

- 10 (1) Accept a consolidated application, in a form as the
11 coordinator shall prescribe, for the approval of the
12 siting, development, construction, and operation of an
13 inter-island renewable energy facility;
- 14 (2) Identify all state and county permits necessary for
15 approval of the facility;
- 16 (3) Gather from the applicant any information the
17 coordinator finds relevant and necessary to review,
18 process, and make a decision on the permits; and
- 19 (4) Work with other federal, state, and county agencies
20 and the applicant to determine the terms and
21 conditions of the permits that are necessary to



1 effectuate this chapter and to protect the public
2 health and safety and promote the general welfare.

3 § -4 **Consolidated application; pre-application**

4 **conference; public notice of receipt of application.** (a) The
5 coordinator shall establish a consolidated application and
6 require the applicant to pay a fee with the consolidated
7 application. The coordinator shall set the fee at an amount
8 sufficient to cover the costs and expenses of the coordinator,
9 coordinator's staff and contractor, and relevant state and
10 county agencies to provide input and advice on the state and
11 county permits necessary for the facility. Upon collection of
12 the fee or periodically thereafter, the coordinator shall
13 transmit to each relevant state or county agency the portion of
14 the fee that reflects the cost to that state or county agency
15 for providing its input and advice.

16 (b) Before accepting a consolidated application, the
17 coordinator may hold a pre-application conference with the
18 prospective applicant to discuss all the state and county
19 permits necessary for the facility and notify the prospective
20 applicant of the information to submit with the consolidated
21 application.



(c) Within ten days of receipt of a consolidated application, the coordinator shall publish a public notice of receipt of the application in a statewide publication. The public notice shall set forth the following:

(1) The name of the applicant;

(2) The location of the proposed inter-island renewable energy facility and route of the undersea cable;

(3) A summarized description of the facility;

(4) The state and county permits required for the facility; and

(5) Any other information deemed necessary or desirable by the coordinator.

§ -5 Approval of state permits. (a) When the coordinator receives an application for an inter-island renewable energy facility that requires state permits, the coordinator, after consultation with relevant federal, state, and county agencies, shall determine the terms and conditions to be imposed on the state permits in order to protect the public health and safety and promote the general welfare. The terms and conditions may include requirements for the applicant to improve off-site infrastructure or establish measures to mitigate significant adverse environmental effects.



1 The coordinator shall make the determination for all terms
2 and conditions of all required state permits no later than sixty
3 days after the public has been informed pursuant to section 343-
4 3 of the acceptance of the final environmental impact statement
5 for the facility; provided that, if an approval for a federal
6 permit is a prerequisite to the approval of a state permit
7 required for the facility, the coordinator shall not make any
8 determination until the federal permit is approved.

9 (b) Upon determining the necessary terms and conditions
10 under subsection (a), the coordinator, on behalf of the relevant
11 state agencies, shall approve the permits with those terms and
12 conditions. The approval shall take effect on the sixty-first
13 day after the public has been informed pursuant to section 343-3
14 of the acceptance of the final environmental impact statement
15 for the facility. If, however, a judicial proceeding has been
16 timely brought under section 343-7(c) regarding the acceptance
17 of the statement, the permits shall be subject to the order
18 entered with the final judicial decision on the dispute. The
19 coordinator may publish the coordinator's approval of all state
20 permits in one consolidated document.

21 If a statement of finding is required by an applicable
22 state law as a condition for approval of a particular state



1 permit, the coordinator shall issue the statement to accompany
2 the permit. For the purpose of this chapter, a statement of
3 finding shall be deemed a "condition" of the permit.

4 (c) Notwithstanding the approval of a state permit by the
5 coordinator, the state agency on whose behalf the permit was
6 approved shall be responsible for monitoring and enforcing the
7 terms and conditions of the permit.

8 § -6 Recommendation for approval of county permits;

9 approval of county permits. (a) When the coordinator receives
10 an application for an inter-island renewable energy facility
11 that requires county permits, the coordinator, after
12 consultation with relevant federal, state, and county agencies,
13 shall determine the terms and conditions to be imposed on the
14 county permits in order to protect the public health and safety
15 and promote the general welfare. The terms and conditions may
16 include requirements for the applicant to improve off-site
17 infrastructure or establish measures to mitigate significant
18 adverse environmental effects.

19 The coordinator shall make the determination for all county
20 permits at the same time the determination is made for state
21 permits under section -5(a).



1 (b) Upon making the determination under subsection (a),
2 the coordinator shall recommend to the relevant county agencies
3 that they approve the county permits with the recommended terms
4 and conditions.

5 If a statement of findings is required by the applicable
6 county law as a condition for approval of a particular county
7 permit, the coordinator shall issue the statement to accompany
8 the permit. For the purpose of this chapter, a statement of
9 findings shall be deemed a "condition" of the permit.

10 (c) Within forty-five days of receipt of the
11 recommendation from the coordinator, each relevant county agency
12 may approve the county permit under its jurisdiction with the
13 terms and conditions as recommended by the coordinator or
14 amended by the county agency. The county agency may charge the
15 applicant a fee for reviewing and acting on the permit.

16 (d) If, within forty-five days of receipt of a
17 recommendation from the coordinator, a county agency does not
18 approve the permit, either because of rejection or inaction, the
19 permit with the terms and conditions recommended by the
20 coordinator shall be deemed approved on the forty-sixth day
21 without necessity of further action by the county agency or
22 coordinator.



1 (e) If, within the forty-five-day period, the county
2 agency approves the permit, but with amendments to any of the
3 terms and conditions recommended by the coordinator, the county
4 agency shall notify the coordinator within three days of the
5 approval. If the notification is not provided to the
6 coordinator within the three-day period, the county agency shall
7 be deemed not to have approved the permit within the forty-five-
8 day period, and the permit shall be deemed approved with the
9 recommended terms and conditions in accordance with subsection
10 (d).

11 The coordinator shall have ten days after receipt of the
12 notification from the county agency to determine whether to
13 accept or reject the amended terms and conditions. If the
14 coordinator accepts all amended terms and conditions, the
15 coordinator shall approve the county permit with the amended
16 terms and conditions. If the coordinator rejects all or some of
17 the amended terms and conditions, the coordinator shall approve
18 the county permit with terms and conditions that exclude the
19 rejected amendments. The coordinator shall issue the decision
20 in writing. If the coordinator does not issue a written
21 decision within the ten-day period, the county permit with terms
22 and conditions as amended by the county agency shall be deemed



1 approved on the eleventh day without necessity of further action
2 by the county agency or coordinator.

3 (f) Notwithstanding the action by the coordinator on a
4 county permit approved pursuant to this subsection, the relevant
5 county agency shall be responsible for monitoring and enforcing
6 the terms and conditions of the permit.

7 § -7 **Coordination with federal permits.** The coordinator
8 shall establish a system to coordinate the approval of required
9 federal permits with state and county permits. The system shall
10 include a process for coordinating the federal environmental
11 impact statement process with the state environmental impact
12 statement process. The coordinator may convene an interagency
13 working group for this purpose.

14 § -8 **Public hearing by coordinator.** (a) If a federal,
15 state, or county law requires a state or county agency to hold a
16 public hearing on a particular permit application before making
17 a decision on the permit, the coordinator shall hold the public
18 hearing in place of the state or county agency; provided that
19 the state or county agency shall not be required to hold the
20 public hearing unless required to do so by federal law. To the
21 extent practicable, the coordinator shall hold one consolidated



1 public hearing to cover all permit applications and required
2 public hearings.

3 (b) Nothing in this section shall prevent a county agency
4 from voluntarily holding a public hearing on a county permit
5 after the coordinator submits to the county agency a
6 recommendation on that permit pursuant to section -6. If a
7 county agency voluntarily holds a public hearing on a county
8 permit, it shall do so within the forty-five-day period provided
9 for review and action on the permit.

10 § -9 Land use, zoning, building, and construction status
11 of inter-island renewable energy facility; state and county
12 permits. (a) An inter-island renewable energy facility, all
13 necessary state and county permits for which have been approved
14 under this chapter, shall be deemed a permitted principal use on
15 the land parcel upon which it is situated. The land use
16 commission, department of land and natural resources, and the
17 relevant county shall revise any state land use district map and
18 county zoning map appropriately to reflect this status.

19 (b) The final plans and specifications of the inter-island
20 renewable energy facility, as set forth in the relevant state
21 and county permits approved pursuant to this chapter, shall be
22 deemed to constitute the zoning, building, and construction



1 standards for the facility and the land parcel upon which it is
2 situated.

3 For the purpose of applicable state and county law:

4 (1) The facility shall be deemed a conforming use; and

5 (2) Any building or structure associated with or related
6 to a facility shall be deemed a conforming building or
7 structure.

8 (c) Nothing in this section shall be deemed to prohibit
9 the amendment of the state land use classification, county
10 zoning map, or other zoning, building, or construction standard
11 with respect to facilities approved under this chapter. Any
12 amendment, if made, shall be accomplished in accordance with
13 applicable state or county law; except that no amendment shall
14 remove the conforming status conferred under subsection (b) with
15 respect to any facility or any associated building or structure.

16 **§ -10 Environmental impact review process;**

17 **applicability.** (a) Chapter 343 shall apply to an inter-island
18 renewable energy facility, a consolidated application for which
19 is submitted to the coordinator under this chapter.

20 (b) Nothing in this chapter or chapter 343 shall prohibit
21 the review and processing by the coordinator of applications for
22 permits for an inter-island renewable energy facility



1 concurrently with the preparation and processing by the
2 applicant of an environmental impact statement for the facility.
3 To accomplish the concurrent review, the coordinator may consent
4 to the receipt and review of portions of a draft of an
5 environmental impact statement before its completion.

6 **§ -11 Power purchase agreement; inapplicability of**
7 **chapter.** A power purchase agreement between an inter-island
8 renewable energy facility owner and a public utility shall not
9 be a "permit" subject to approval by the coordinator. Any power
10 purchase agreement shall be subject to the applicable provisions
11 of chapter 269.

12 **§ -12 Building or grading permit required from county.**
13 A grading or building permit issued by the applicable county
14 shall be required to grade a site or construct a structure for
15 an inter-island renewable energy facility. The applicable
16 county shall establish an expedited process for review and
17 issuance of all required permits. Under the process, the county
18 may contract with a third party to conduct the review of the
19 permit application and require the applicant for the permit to
20 pay the cost incurred for the third party review.

21 **§ -13 Judicial review of dispute regarding approved**
22 **permit; inapplicability of contested case procedures.** (a) Any



1 person aggrieved by the approval of a state or county permit or
2 term or condition of any approved permit may file an action for
3 relief in the circuit court.

4 (b) The inapplicability of the use of contested case
5 procedures pursuant to chapter 91 in the approval of any state
6 or county permit pursuant to this chapter shall not be grounds
7 for any judicial appeal.

8 § -14 Inapplicability of maximum time period rule
9 requirement. Section 91-13.5 shall not apply to the
10 coordinator. The deadlines for review and action upon a
11 consolidated application for an inter-island renewable energy
12 facility shall be subject to this chapter.

13 § -15 Rules. (a) The coordinator may adopt interim
14 rules to implement this chapter without regard to the notice and
15 public hearing requirements of section 91-3 or the small
16 business impact review requirements of chapter 201M.

17 (b) Any amendment of the interim rules shall be subject to
18 all provisions of chapters 91 and 201M.

19 § -16 Superiority of chapter over conflicting state or
20 county law. The provisions of this chapter shall supersede any
21 conflicting state or county law."



1 SECTION 3. Section 91-1, Hawaii Revised Statutes, is
2 amended by amending the definition of "contested case" to read
3 as follows:

4 "(5) "Contested case" means a proceeding in which the legal
5 rights, duties, or privileges of specific parties are
6 required by law to be determined after an opportunity
7 for agency hearing. The term does not apply to the
8 review, processing, or approval of state or county
9 permits for an inter-island renewable energy facility
10 under chapter _____."

11 SECTION 4. Section 269-27.2, Hawaii Revised Statutes, is
12 amended by amending subsection (c) to read as follows:

13 "(c) The rate payable by the public utility to the
14 producer for the nonfossil fuel generated electricity supplied
15 to the public utility shall be as agreed between the public
16 utility and the supplier and as approved by the public utilities
17 commission; provided that in the event the public utility and
18 the supplier fail to reach an agreement for a rate, the rate
19 shall be as prescribed by the public utilities commission,
20 according to the powers and procedures provided in this chapter.

21 In the exercise of its authority to determine the just and
22 reasonable rate for the nonfossil fuel generated electricity



1 supplied to the public utility by the producer, the commission
2 shall establish that the rate for purchase of electricity by a
3 public utility shall not be more than one hundred per cent of
4 the cost avoided by the utility when the utility purchases the
5 electrical energy rather than producing the electrical energy.

6 The commission's determination of the just and reasonable
7 rate shall be accomplished by establishing a methodology that
8 removes or significantly reduces any linkage between the price
9 of fossil fuels and the rate for the nonfossil fuel generated
10 electricity to potentially enable utility customers to share in
11 the benefits of fuel cost savings resulting from the use of
12 nonfossil fuel generated electricity. As the commission deems
13 appropriate, the just and reasonable rate for nonfossil fuel
14 generated electricity supplied to the public utility by the
15 producer may include mechanisms for reasonable and appropriate
16 incremental adjustments, such as adjustments linked to consumer
17 price indices for inflation or other acceptable adjustment
18 mechanisms.

19 When an application is submitted to the commission for the
20 approval of a rate agreement for nonfossil fuel generated
21 electricity between an inter-island renewable energy facility
22 owner and a public utility under chapter , the commission



1 shall approve, approve with modification, or reject the
2 application within thirty days of receipt. If the commission
3 does not approve, approve with modification, or reject the
4 proposed rate agreement within the thirty-day period, the rate
5 agreement as submitted shall be deemed approved on the thirty-
6 first day.

7 When an inter-island renewable energy facility owner and a
8 public utility fail to reach an agreement on the rate payable
9 for nonfossil fuel generated electricity, either party may
10 request the commission to prescribe a just and reasonable rate.
11 The commission shall prescribe the rate within thirty days of
12 receipt of the request. If the commission does not prescribe
13 the rate within the thirty-day period, the rate last proposed by
14 the inter-island renewable energy facility owner shall be deemed
15 the rate prescribed. That rate shall be effective on the first
16 day after the thirty-day period.

17 For the purpose of this section, "inter-island renewable
18 energy facility owner" means the owner or authorized agent of
19 the owner of an inter-island renewable energy facility as
20 defined in section -1."

21 SECTION 5. Section 343-2, Hawaii Revised Statutes, is
22 amended by adding a new definition of "inter-island renewable



1 energy facility" to be appropriately inserted and to read as
2 follows:

3 "Inter-island renewable energy facility" has the same
4 meaning as that term is defined in section -1."

5 SECTION 6. Section 343-5, Hawaii Revised Statutes, is
6 amended by amending subsection (c) to read as follows:

7 "(c) Whenever an applicant proposes an action specified by
8 subsection (a) that requires approval of an agency and that is
9 not a specific type of action declared exempt under section 343-
10 6, the agency initially receiving and agreeing to process the
11 request for approval shall prepare an environmental assessment
12 of the proposed action at the earliest practicable time to
13 determine whether an environmental impact statement shall be
14 required~~[-]~~; provided that for an action that proposes the
15 establishment of an inter-island renewable energy facility, a
16 draft environmental impact statement shall be prepared at the
17 earliest practicable time. The final approving agency for the
18 request for approval is not required to be the accepting
19 authority.

20 For environmental assessments for which a finding of no
21 significant impact is anticipated:



- 1 (1) A draft environmental assessment shall be made
2 available for public review and comment for a period
3 of thirty days;
- 4 (2) The office shall inform the public of the availability
5 of the draft environmental assessment for public
6 review and comment pursuant to section 343-3;
- 7 (3) The applicant shall respond in writing to comments
8 received during the review, and the agency shall
9 prepare a final environmental assessment to determine
10 whether an environmental impact statement shall be
11 required. A statement shall be required if the agency
12 finds that the proposed action may have a significant
13 effect on the environment.

14 The agency shall file notice of the agency's
15 determination with the office, which, in turn, shall
16 publish the agency's determination for the public's
17 information pursuant to section 343-3.

18 The draft and final statements, if required, shall be
19 prepared by the applicant, who shall file these statements with
20 the office.

21 The draft statement shall be made available for public
22 review and comment through the office for a period of forty-five



1 days. The office shall inform the public of the availability of
2 the draft statement for public review and comment pursuant to
3 section 343-3.

4 The applicant shall respond in writing to comments received
5 during the review and prepare a final statement. The office,
6 when requested by the applicant or agency, may make a
7 recommendation as to the acceptability of the final statement.

8 The authority to accept a final statement shall rest with
9 the agency initially receiving and agreeing to process the
10 request for approval. The final decision-making body or
11 approving agency for the request for approval is not required to
12 be the accepting authority. The planning department for the
13 county in which the proposed action will occur shall be a
14 permissible accepting authority for the final statement. For an
15 inter-island renewable energy facility, the energy resources
16 coordinator under chapter shall be the accepting authority.

17 Acceptance of a required final statement shall be a
18 condition precedent to approval of the request and commencement
19 of the proposed action. Upon acceptance or nonacceptance of the
20 final statement, the agency shall file notice of such
21 determination with the office. The office, in turn, shall



1 publish the determination of acceptance or nonacceptance of the
2 final statement pursuant to section 343-3.

3 The agency receiving the request, within thirty days of
4 receipt of the final statement, shall notify the applicant and
5 the office of the acceptance or nonacceptance of the final
6 statement. The final statement shall be deemed to be accepted
7 if the agency fails to accept or not accept the final statement
8 within thirty days after receipt of the final statement;
9 provided that the thirty-day period may be extended at the
10 request of the applicant for a period not to exceed fifteen
11 days.

12 In any acceptance or nonacceptance, the agency shall
13 provide the applicant with the specific findings and reasons for
14 its determination. An applicant, within sixty days after
15 nonacceptance of a final statement by an agency, may appeal the
16 nonacceptance to the environmental council, which, within thirty
17 days of receipt of the appeal, shall notify the applicant of the
18 council's determination. In any affirmation or reversal of an
19 appealed nonacceptance, the council shall provide the applicant
20 and agency with specific findings and reasons for its
21 determination. The agency shall abide by the council's
22 decision."



1 SECTION 7. Chapter 196D, Hawaii Revised Statutes, is
2 repealed.

3 SECTION 8. If a prospective developer of an inter-island
4 renewable energy facility has submitted an application for a
5 state or county permit necessary for the siting, development,
6 construction, or operation of the facility before July 1, 2008,
7 the prospective developer may:

- 8 (1) Request the relevant state or county agency to proceed
9 with reviewing, processing, and acting upon the permit
10 application; or
- 11 (2) Withdraw the permit application and submit a
12 consolidated application with the energy resources
13 coordinator pursuant to chapter , Hawaii Revised
14 Statutes, in section 2 of this Act; provided that if
15 the prospective developer chooses to submit a
16 consolidated application, the relevant state or county
17 agency shall transmit to the coordinator all documents
18 applicable to the withdrawn permit application, except
19 those that the agency finds are internal work products
20 that may expose the agency to liability if released.

21 If the prospective developer has submitted two or more
22 permit applications with state or county agencies before July 1,



1 2008, the prospective developer may select the action under
2 paragraph (1) for some applications and the action under
3 paragraph (2) for other applications.

4 A draft or final environmental impact statement under
5 preparation by a prospective developer for a state or county
6 permit application submitted before July 1, 2008 may be used for
7 a consolidated application submitted to the coordinator. The
8 prospective developer shall not be required to begin the
9 environmental impact statement process anew if withdrawing the
10 permit application and submitting a consolidated application.

11 SECTION 9. There is appropriated out of the general
12 revenues of the State of Hawaii the sum of \$ or so much
13 thereof as may be necessary for fiscal year 2008-2009 for the
14 establishment and operation of the inter-island renewable energy
15 facility siting process established under this Act.

16 The sum appropriated shall be expended by the department of
17 business, economic development, and tourism for the purposes of
18 this Act.

19 SECTION 10. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



1 SECTION 11. This Act shall take effect upon its approval;
2 provided that section 9 shall take effect on July 1, 2008.

3

INTRODUCED BY:

Calvin K. Day
JAN 22 2008



Report Title:

Renewable Energy

Description:

Establishes an inter-island renewable energy facility siting process to expedite the review and action upon state and county permits necessary for the siting, development, construction, and operation of a renewable energy facility.

